

Order under Section 69
Residential Tenancies Act, 2006

File Number: CEL-15596

G.M. (the 'Landlord') applied for an order to terminate the tenancy and evict J.C. (the 'Tenant') because he, another occupant of the rental unit or someone he permitted in the residential complex has wilfully caused undue damage to the premises; The Landlord has also applied for an order requiring the Tenant to compensate the Landlord for the damage; and because he, another occupant of the rental unit or someone he permitted in the residential complex has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord in a residential complex that has three or fewer residential units; because he, another occupant of the rental unit or a person the Tenant permitted in the residential complex has seriously impaired the safety of any person. The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was heard in Mississauga on January 16, 2009.

The Landlord and the Tenant attended the hearing.

Determinations:

1. The Tenant resides on the upper level of the residential complex and the Landlord resides on the lower level of the complex.
2. The Landlord alleged that the Tenant has wilfully caused undue damage to the rental unit. The Landlord however did not substantiate on what was damaged by the Tenant. In the alternative, the Landlord did not convince me that the alleged damage, if any, was significantly greater than what is required to give a notice of termination pursuant to clause 63(1)(a) of the *Residential Tenancies Act, 2006* (the 'Act'). This part of the application is therefore denied.
3. The Tenant has loud parties in the rental unit which go on late into the night. Efforts by the Landlord to reason with the Tenant about the loud parties and the number of people coming to the unit for the parties have failed.
4. This conduct substantially interferes with the Landlord's reasonable enjoyment of the residential complex and also substantially interferes with a lawful right, privilege or interest of the Landlord.
5. The Landlord testified that the Tenant smokes inside the rental unit contrary to the lease agreement between the parties. The Landlord testified that tobacco smoke goes through the ventilation system into his unit causing him and his family headaches and sleep loss. The Tenant denied smoking inside the rental unit and said he smokes outside the rental unit. After reviewing a picture submitted by the Landlord showing cigarette butts in the rental unit, I am satisfied that the Tenant smokes inside the rental unit.

6. I am not however convinced that the smoking of the cigarettes in the rental unit seriously impairs the safety of the Landlord. However, I find that the smoke from the cigarettes substantially interferes with the Landlord's reasonable enjoyment of the residential complex and also substantially interferes with a lawful right, privilege or interest of the Landlord.
7. The Landlord also testified that the Tenant threatened him physically and also threatened to break the windows in the rental unit and to burn down the rental unit.
8. After considering the evidence from both parties, I find that the threats by the Tenant against the Landlord occurred because the Landlord had taken the Tenant's keys to the rental unit and was refusing to return the keys to the Tenant. I also find that the Tenant became enraged when the Landlord took pictures of the Tenant while the Tenant was naked. Therefore, I find that although the actions of the Tenant of threatening the Landlord were uncalled for and could be regarded as impairing the safety of the Landlord, the Landlord provoked the Tenant into acting in the way that the Tenant did. Taking pictures of the Tenant while the Tenant was naked was an inappropriate act by the Landlord.
9. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and find that it would not be unfair to postpone the eviction until February 6, 2009 pursuant to subsection 83(1)(b) of the Act. The Tenant is willing to move out of the rental unit but is having problems finding suitable alternative accommodation.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before February 6, 2009.
2. The Tenant shall pay to the Landlord \$1,367.68, which represents compensation for the use of the unit from December 21, 2008 to January 21, 2009.
3. The Tenant shall also pay to the Landlord \$42.74 per day for compensation for the use of the unit from January 22, 2009 to the date he moves out of the unit.
4. The Tenant shall also pay to the Landlord \$150.00 for the cost of filing the application.
5. If the Tenant does not pay the Landlord the full amount owing on or before February 6, 2009, he will start to owe interest. This will be simple interest calculated from February 7, 2009 at 4.00% annually on the balance outstanding.
6. If the unit is not vacated on or before February 6, 2009, then starting February 7, 2009, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.

7. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlord on or after February 7, 2009. The Sheriff is requested to expedite the enforcement of this order.

January 21, 2009
Date Issued

Freda Shamatutu
Member, Landlord and Tenant Board

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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.

In accordance with section 81 of the Act, the part of this order relating to the eviction expires on August 7, 2009 if the order has not been filed on or before this date with the Court Enforcement Office (Sheriff) that has territorial jurisdiction where the rental unit is located.